



**DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155**

JUL 24 2013

Ref: 13-F-1087

Mr. Shawn Musgrave
MuckRock News
DEPT MR 6062
P.O.Box 55819
Boston, MA 02205-5819

Dear Mr. Musgrave:

This is an interim response to your electronic Freedom of Information Act (FOIA) request dated July 9, 2013, for a copy of "the memo or other communication from the OSD assigning this matter to another agency within the Defense Department." The "memo or other communication" is in relation to your inquiry of a delegation by OSD to another agency regarding a contract for a study to be completed in compliance with SEC 158 of NDAA 1013. Sec. 158 pertains to Small Arms and Small-Caliber Ammunition Capabilities. A copy of your electronic FOIA is enclosed for your reference. You have requested a waiver of all fees associated with responding to this request.

With regard to your request for a waiver of any applicable fees a fee waiver is appropriate when "disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester." In making a determination, six factors are considered as to whether your request satisfies this statutory standard (5 U.S.C. & 552(a)(4)(A)(iii): (1) whether the subject of the requested records concerns the operations or activities of the government; (2) whether the disclosure is likely to contribute to an understanding of government operations or activities; (3) whether disclosure of the requested information will contribute to the understanding of the general public; (4) whether the disclosure is likely to contribute significantly to public understanding of government operations and activities; (5) whether the requester has a commercial interest that would be furthered by the requested disclosure; and, (6) whether any such commercial interest outweighs the public interest in disclosure.

While the requested information does concern the operations and activities of the government and does not appear to be intended for a commercial interest, it is not clear how the responsive documents - should they exist - would significantly contribute to the public understanding of the operations and activities of the government. After carefully reviewing your request I am denying your fee waiver request because the information stated does not support how the documents will significantly contribute to the public's increased understanding of the operations and activities of government. Please be aware that we reserve the right to grant a fee waiver should a search find documents that meet the criterion of a public interest fee waiver as described in the previous paragraph.

This office processes requests on a first-in, first-out basis. At this time, we are unable to make a release determination on your request within the 20-day statutory time period as there are unusual circumstances which impact our ability to quickly process your request. These unusual circumstances are: (a) the need to search for and collect records from facilities geographically separated from this office and (b) the need to consult with one or more agencies or DoD components having a substantial interest in either the determination or the subject matter of the records. For these reasons, your request has been placed in the complex processing queue and it will be worked in the order the request was received. As a matter of information, our current administrative workload is approximately 1,355 open requests.

If you are not satisfied with these actions, you may appeal to the appellate authority, the Director of Administration and Management, Office of the Secretary of Defense. To submit your appeal, you should write directly to the Defense Freedom of Information Policy Office, ATTN: Mr. James Hogan, 1155 Defense Pentagon, Washington, D.C. 20101-1155. Your appeal should be postmarked within 60 calendar days of the date of this letter, should cite to case number 13-F-1087, and should be clearly marked "Freedom of Information Act Appeal"

Sincerely,



 Paul J. Jacobsmeyer
Chief

Attachments:
As stated

From: Aldorfer, Susan CIV WHS-ESD
Sent: Tuesday, July 09, 2013 10:05 AM
To: OSD-JS FOIA Requester Service Center
Subject: FW: Follow up to Freedom of Information Request: STUDY ON SMALL ARMS AND SMALL-CALIBER AMMUNITION CAPABILITIES
Signed By: susan.aldorfer@whs.mil

Please log in as a new request.

-----Original Message-----

From: 6062-09147622@requests.muckrock.com [mailto:6062-09147622@requests.muckrock.com]
Sent: Tuesday, July 09, 2013 9:53 AM
To: Aldorfer, Susan CIV WHS-ESD
Subject: Follow up to Freedom of Information Request: STUDY ON SMALL ARMS AND SMALL-CALIBER AMMUNITION CAPABILITIES

July 9, 2013
Department of Defense, Office of the Secretary of Defense OSD/JS FOIA Requester Service Center Office of Freedom of Information
1155 Defense Pentagon
Washington, DC 20301-1155

This is a follow up to a previous request:

Ms. Aldorfer,

If that is the case, then I would like to amend my request to the memo or other communication from the OSD assigning this matter to another agency within the Defense Department. As the interfacing entity with Congress, OSD must have delegated it elsewhere.

Thank you.

Shawn

On July 9, 2013:

Dear Mr. Musgrave,

You requested a "copy of the contract for the study to be completed in compliance with SEC. 158 of NDAA 2013, as well as a copy of the study if it has already been completed by the date this request is processed: SEC. 158. STUDY ON SMALL ARMS AND SMALL-CALIBER AMMUNITION CAPABILITIES."

Please understand that "SMALL ARMS AND SMALL-CALIBER AMMUNITION CAPABILITIES" would not be an OSD/JS matter. As previously explained, neither DoD contracting, nor DoD FOIA processing, is centralized. This office only processes requests for OSD/JS records. The Services and DoD Agencies process records related to their own organization. In other words, there is no office responsible for all of DoD contracting, nor for all of DoD FOIA processing. Our web site at <http://www.dod.gov/pubs/foi/> is clear that this office only processes requests for OSD/JS records.

Without a contract number, we are unable to determine which Service/DoD Agency would hold such contract. For example, "SMALL-CALIBER" suggests that this might be an Army contract. However, without a contract number, we do not know that. If that is the case, the Army, and not OSD/JS, would be the appropriate organization to process this request, as the responsive contract would be an Army record, and not an OSD record. This office cannot process records that are under the purview of another organization. Neither can other organizations process records belonging to this organization. The bottom line, however, is that without company name and contract number, there is not a way to locate contract information, including the contracting office. This is where it becomes the responsibility of the requester to provide sufficient information to conduct a records search. The FOIA does not require agencies to conduct research in order to respond to a request. It only requires agencies to provide specifically identified records, subject to itemized exemptions, which contain information responsive to a request. I previously provided you with the web site for the Federal Procurement Data System (FPDS), which is helpful in identifying contract information. Through the FPDS web site, you may be able to identify the contract, and the contracting organization, that you are interested in.

If you are not satisfied with this action, you may appeal to the appellate authority, the Director of Administration and Management, Office of the Secretary of Defense, by writing directly to the Defense Freedom of Information Policy Office, Attn: Mr. James Hogan, 1155 Defense Pentagon, Washington, D.C. 20301-1155. Your appeal should be postmarked within 60 calendar days of the date of this letter, should cite case number 13-F-1027, and should be clearly marked "Freedom of Information Act Appeal."

Respectfully,

On July 8, 2013:

Hello,

Thank you for your response. The connection to the OSD is plain: as required under the cited statute, the Secretary of Defense must "the Secretary of Defense shall enter into a contract with a federally funded research and development center to conduct a study on the requirements analysis and determination processes and capabilities of the Department of Defense with respect to small arms and small-caliber ammunition."

FOIA requires the requester to EITHER reasonably describe the records sought or the circumstances that lead to the creation of the records. I have done the latter.

Thank you,
Shawn

On July 8, 2013:

Dear Shawn Musgrave,

This is in response to your Freedom of Information Act (FOIA) request, as stated below. Your request was received in this office and assigned FOIA case number 13-F-1027.

As you may not know, this office only processes FOIA requests for records related to the Office of Secretary of Defense and the Joint Staff (OSD/JS). There is no central FOIA processing point for the entire Department of Defense (DoD). Within DoD, each of the military services and each of the DoD agencies are responsible for processing FOIA requests for records related to their own organization. You have not provided enough information to determine a connection between the records you seek and the OSD/JS. Thus, your request is not reasonably described to support processing by this office.

DoD contracting is not centralized. There are multiple contracting offices throughout DoD, each of which has their own contract numbers. In order for any DoD organization to process a request for contract information, it needs enough information - including company name and contract number - that connects a request to that DoD organization (in this instance with the OSD/JS). Without company name and contract number, there is not a way to locate contract information.

It is the requester's responsibility to reasonably describe the records sought under the FOIA. The FOIA does not require agencies to answer questions or to conduct research in order to respond to a request. You MIGHT be able to find some helpful information on the Federal Procurement Data System web site - located at https://www.fpds.gov/fpdsng_cms/index.php?pageSource=loginPage - which is a resource that any member of the public can use it without registering for an account. Enter your information in the "ezSearch" bar and search results will be displayed in the center of the page. You can further determine which agency has which contracts by drilling down on the information on the left side of the page. We hope this information is helpful for you to determine which contracts you are interested in.

As stated, your request is not reasonably described to support processing by this office, and is thus not a proper FOIA request. This action closes your request in this office.

Respectfully,

On July 8, 2013:

Dear Shawn Musgrave,

This is in response to your Freedom of Information Act (FOIA) request, as stated below. Your request was received in this office and assigned FOIA case number 13-F-1027.

As you may not know, this office only processes FOIA requests for records related to the Office of Secretary of Defense and the Joint Staff (OSD/JS). There is no central FOIA processing point for the entire Department of Defense (DoD). Within DoD, each of the military services and each of the DoD agencies are responsible for processing FOIA requests for records related to their own organization. You have not provided enough information to determine a connection between the records you seek and the OSD/JS. Thus, your request is not reasonably described to support processing by this office.

DoD contracting is not centralized. There are multiple contracting offices throughout DoD, each of which has their own contract numbers. In order for any DoD organization to process a request for contract information, it needs enough information - including company name and contract number - that connects a request to that DoD organization (in this instance with the OSD/JS). Without company name and contract number, there is not a way to locate contract information.

It is the requester's responsibility to reasonably describe the records sought under the FOIA. The FOIA does not require agencies to answer questions or to conduct research in order to respond to a request. You MIGHT be able to find some helpful information on the Federal Procurement Data System web site - located at https://www.fpds.gov/fpdsng_cms/index.php?pageSource=loginPage - which is a resource that any member of the public can use it without registering for an account. Enter your information in the "ezSearch" bar and search results will be displayed in the center of the page. You can further determine which agency has which contracts by drilling down on the information on the left side of the page. We hope this information is helpful for you to determine which contracts you are interested in.

As stated, your request is not reasonably described to support processing by this office, and is thus not a proper FOIA request. This action closes your request in this office.

Respectfully,

On June 27, 2013:

Hello,

I hereby resubmit the FOIA request below, which was originally submitted to FOIA@whs.mil inadvertently.

Thank you.

On June 27, 2013:

Dear Requester,

You will need to RESUBMIT your request, as the email address - foia@whs.mil - is no longer valid. To submit your request electronically, go to the OSD/JS FOIA Requester Service Center web site at:

On June 27, 2013:

To Whom It May Concern:

This is a request under the Freedom of Information Act. I hereby request the following records:

A copy of the contract for the study to be completed in compliance with SEC. 158 of NDAA 2013, as well as a copy of the study if it has already been completed by the date this request is processed:

SEC. 158. STUDY ON SMALL ARMS AND SMALL-CALIBER AMMUNITION CAPABILITIES.

(a) Study-

(1) **IN GENERAL-** Not later than 30 days after the date of the enactment of this Act, the Secretary of Defense shall enter into a contract with a federally funded research and development center to conduct a study on the requirements analysis and determination processes and capabilities of the Department of Defense with respect to small arms and small-caliber ammunition that carries out each of the following:

(A) A comparative evaluation of the current military small arms in use by the Armed Forces, including general purpose and special operations forces, and select military equivalent commercial candidates not necessarily in use militarily but currently available.

(B) A comparative evaluation of the standard small-caliber ammunition of the Department with other small-caliber ammunition alternatives.

(C) An assessment of the current plans of the Department to modernize the small arms and small-caliber ammunition capabilities of the Department.

(D) An assessment of the requirements analysis and determination processes of the Department for small arms and small-caliber ammunition.

(2) **FACTORS TO CONSIDER-** The study required under paragraph (1) shall take into consideration the following factors:

(A) Current and future operating environments, as specified or referred to in strategic guidance and planning documents of the Department.

(B) Capability gaps identified in small arms and small-caliber ammunition capabilities based assessments of the Department.

(C) Actions taken by the Secretary to address capability gaps identified in any such capabilities based assessments.

(D) Findings from studies of the Department of Defense Small Arms and Small-Caliber Ammunition defense support team and actions taken by the Secretary in response to such findings.

(E) Findings from the assessment required by section 143 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 10 U.S.C. 2304 note) and actions taken by the Secretary in response to such findings.

(F) Modifications and improvements recently applied to small arms and small-caliber ammunition of the Armed Forces, including general purpose and special operations forces, as well as the potential for continued modification and improvement.

(G) Impacts to the small arms production industrial base and small-caliber ammunition industrial base, if any, associated with changes from current U.S. or NATO standard caliber weapons or ammunition sizes.

(H) Total life cycle costs of each small arms system and small-caliber ammunition, including incremental increases in cost for industrial facilitization or small arms and ammunition procurement, if any, associated with changes described in subparagraph (G).

(I) Any other factor the federally funded research and development center considers appropriate.

(3) **ACCESS TO INFORMATION-** The Secretary shall ensure that the federally funded research and development center conducting the study under paragraph (1) has access to all necessary data, records, analyses, personnel, and other resources necessary to complete the study.

(b) Report-

(1) IN GENERAL- Not later than September 30, 2013, the Secretary shall submit to the congressional defense committees a report containing the results of the study conducted under subsection (a)(1), together with the comments of the Secretary on the findings contained in the study.

(2) CLASSIFIED ANNEX- The report shall be in unclassified form, but may contain a classified annex.

(c) Small Arms Defined- In this section, the term 'small arms' means weapons assigned to and operated by an individual member of the Armed Forces, including handguns, rifles and carbines (including sniper and designated marksman weapons), sub-machine guns, and light-machine guns.

I also request that, if appropriate, fees be waived as I believe this request is in the public interest. The requested documents will be made available to the general public free of charge as part of the public information service at MuckRock.com, processed by a representative of the news media/press and is made in the process of news gathering and not for commercial usage.

In the event that fees cannot be waived, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 20 business days, as the statute requires.

Sincerely,

Shawn Musgrave

Filed via MuckRock.com

E-mail (Preferred): 6062-09147622@requests.muckrock.com

For mailed responses, please address (see note):

MuckRock News

DEPT MR 6062

PO Box 55819

Boston, MA 02205-5819

PLEASE NOTE the new address as well as the fact that improperly addressed (i.e., with the requester's name rather than MuckRock News) requests might be returned by the USPS as undeliverable.